

Michigan Supreme Court  
**State Court Administrative Office**  
309 N. Washington Square, P. O. Box 30048  
Lansing, Michigan 48909  
(517) 373-0130

DATE: December 20, 2000

TO: **ALL CHIEF CIRCUIT JUDGES**  
cc: **FAMILY DIVISION JUDGES**  
**FRIENDS OF THE COURT**  
**FAMILY DIVISION ADMINISTRATORS**  
**CIRCUIT COURT ADMINISTRATORS**

FROM: John D. Ferry, Jr., State Court Administrator

SUBJ: **SCAO Administrative Memorandum 2000-11**  
**Administrative Liens for Past Due Support**

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Section 19 of the Friend of the Court Act (MCL 552.519; MSA 25.176(19) provides that the State Court Administrative Office, Friend of the Court Bureau, develop procedures for operation of friend of the court offices. As a part of these responsibilities, the Friend of the Court Bureau is specifically directed to develop guidelines for imposing liens. MCL 552.519(3)(j)(i); MSA 25.176(19)(3)(j)(i). The Friend of the Court Act also requires that each friend of the court take all necessary steps to adopt office procedures to implement the act, supreme court rules, and the recommended policy and procedures of the State Court Administrative Office, Friend of the Court Bureau. MCL 552.503(6); MSA 25.176(3)(6).

1998 Public Act 334 amends the Friend of the Court Act regarding the manner in which liens may be imposed on delinquent payers' property. Liens are now imposed on a payer's real and personal property by operation of law for any past due support. MCL 552.625a; MSA 25.164(25a). Administrative procedures for perfecting and levying on the lien have been added. See MCL 552.625b; MSA 25.164(25b).

Information regarding financial institution accounts of delinquent payers soon will become available to friend of the court offices through a data match process. This policy directs how liens should be perfected on those accounts and any other property owned by delinquent payers.

This policy and recommended procedures outline the criteria and steps for administratively perfecting liens and levying against the property. Should you have any questions regarding this policy, you may contact **Ron Kollen** at [kollenr@jud.state.mi.us](mailto:kollenr@jud.state.mi.us) or (517) 373-4835.

## **ADMINISTRATIVE LIENS**

### **Recommended Policies and Procedures**

#### **I. LIEN REQUIREMENTS**

A lien is an interest in property to secure payment on a debt. Persons transferring or receiving property subject to a lien may be liable to the lien holder in the amount of the lien.

Public Act 334 of 1996 adds sections 25a and 25b to the Friend of the Court Act to change the manner in which liens can be imposed against delinquent support payers. Section 25a provides:

"The amount of past due support that accrues under a judgment pursuant to section 3 or under the law of another state constitutes a lien in favor of the recipient of support against the real and personal property of a payer. . . . The lien is effective at the time that the support is due and unpaid and shall continue until the amount of past due support is paid in full or the lien is terminated by the support enforcement agency." MCL 552.625a; MSA 25.164(25a).

Section 25b(1) provides:

"The office of the friend of the court may perfect a lien created under section 25a upon the real or personal property of the payer when an arrearage has accrued in an amount that exceeds the amount of periodic support payments payable for 1 year under the payer's support order." MCL 552.625b(1); MSA 25.164(25b)(1).

The remainder of Section 25b then gives procedures that must be followed when perfecting a lien or when levying on a perfected lien.

#### **A. Determining Cases Where a Lien May Be Perfected**

##### **1. Determining Threshold**

The threshold for perfecting a lien is "when an arrearage exceeds the amount of periodic support payments payable for 1 year under the support order." MCL 552.625b(1); MSA 25.164(25b)(1).

The accounts to be included when determining support are those set forth by separate policy.<sup>1</sup> One year's support obligation should be calculated by determining the daily amount and multiplying that amount by 365.<sup>2</sup> If there is no current obligation to pay support, the most recent non-zero support obligation should be used in determining the threshold.

## **2. Determining Arrearage Meeting the Threshold**

When determining whether the threshold has been met, the friend of the court must use the same definition of support used to establish the threshold.<sup>3</sup> For required periodic payments of a lump sum support amount included in the threshold, only the amount of the unpaid periodic obligation may be included in the arrearage calculation.<sup>4</sup>

Public Act 239 of 1996 modifies what the friend of the court may consider as arrearage for enforcement purposes:

"The friend of the court shall not consider a payer to have an arrearage if the payer produces documentary evidence that money has been withheld from the payer's income in an amount equal to or greater than the amount required under the payer's support order. This documentary evidence includes, but is not limited to, pay stubs, wage statements, or other written income information produced by the payer's employer." MCL 552.607a; MSA 25.164(7a).

In accordance, when determining whether to perfect a lien, the friend of the court office must reduce the arrearage by any support payment falling within this statutory prohibition of enforcement. When presented with proof of payments falling into this category, the friend of the court should delay perfecting a lien when the amount withheld, but not received, brings the arrearage below the statutory threshold.

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<sup>1</sup> That policy also establishes which accounts are to be used when determining that enforcement must be initiated pursuant to MCL 552.511(1); MSA 25.176(11)(1), arrearage must be reported pursuant to MCL 552.512; MSA 25.176(1), and licenses may be suspended pursuant to MCL 552.628 – 552.630; MSA 25.164(28) – 25.164(30).

<sup>2</sup> Since enforcement by lien is discretionary, the threshold for taking lien action may be set higher than the minimum amount calculated by using the formula stated here.

<sup>3</sup> That is, those things defined as support in MCL 552.502(h); MSA 25.176(2a)(h) and MCL 552.602(y); MSA 25.164(2)(y).

<sup>4</sup> The full lump sum amount, minus any payments made, should be included if the full lump sum amount was included when establishing the threshold.

### **3. Amount of Lien**

The amount of the lien should include all amounts past due for the categories of support listed in MCL 552.502a(h); MSA 25.176(2a)(h) and MCL 552.602(y); MSA 25.164(2)(y)(or successor statutes).<sup>5</sup> In conformity with the surcharge policy and tax offset submissions, the total of lump sum amounts which have been ordered should not be counted as arrearage; rather only that portion which is overdue should be counted. For example, if an individual is ordered to pay \$2000 in confinement expenses at the rate of \$5 per week, only the arrearage which accrued at the rate of \$5 per week and which remains unpaid should be included. The exception occurs when an individual is ordered to pay the lump sum and the intent of the order is that the lump sum be paid immediately. In that situation, the lump sum may be included in the amount of the lien. The amount of the lien should also include any surcharge arising because of delay in paying required support.

The amount of the lien should not include any amounts the payer demonstrates were withheld, but not transmitted to the friend of the court. See MCL 552.607a; MSA 25.164(7a) for further information regarding when these amounts must be excluded from enforcement.

## **II. NOTICE AND REVIEW REQUIREMENTS TO PERFECT A LIEN**

### **A. Selecting Cases for Enforcement of Lien**

Although the statute creates liens by operation of law, it makes enforcement of those liens discretionary. However, in order to meet its obligation to initiate enforcement of delinquent support orders, the FOC must exercise its discretion to perfect a lien when no other enforcement technique is obtaining payments and the statutory requirements to perfect the lien exist, i.e., the statutory threshold is met and payer assets are identified.

Because of the immediate harm which can occur if a mistake is made, liens should only be perfected when the payer previously has had notice of his or her delinquency<sup>6</sup>. A lien should not be perfected unless the payer previously has been notified in writing of an arrearage. The notification can be

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<sup>5</sup> Support is defined to mean all of the following: (i) the payment of money for a child or spouse ordered by the circuit court, including medical, dental and other health care expenses, child care expenses, and educational expenses; (ii) the payment of money ordered by the circuit court under the paternity act for necessary confinement expenses or for repayment of genetic testing expenses; (iii) a surcharge accumulated on past due support. MCL 552.502a(h); MSA 25.176(2a)(h).

<sup>6</sup> A payer may be considered to have received notice if the notice is sent by first class mail to the last address the payer provided to the friend of the court. See MCR 3.211(D)(2) and MCL 552.603(6)(c); MSA 25.164(3)(6)(c).

included as part of another enforcement procedure, but should occur less than one year before the lien is perfected.

Also, the friend of the court must establish procedures so that all similarly situated cases are treated the same. The following are criteria that could be considered when determining which cases are to be selected:

- Have previous enforcement efforts failed to generate regular and consistent support payments?
- Will the lien be perfected on an account at a financial institution, or on other real or personal property?
- If the potential lien is on a financial account and more than one account has been identified, will liens on certain accounts be less harmful than on others? For example, a lien on a checking account could also harm a creditor accepting a check, whereas a lien on a savings account will likely only affect the support obligor. Similarly, a lien on a joint account is more likely to harm an innocent party. See Appendix A for suggested criteria to be used when determining whether to lien a particular financial institution account.
- Does additional information need to be collected to assure that identified property actually belongs to a payer? For example, in a joint financial institution account, what is the nature of the support obligor's interest (which may be indicated by which person deposited the funds)?
- Is the payer's real or personal property of sufficient value or equity to make perfection of the lien cost effective? When answering this question, you should consider any prior liens against the property which will reduce the amount available for conversion into payment of support.
- Has sufficient information been provided to the friend of the court office for it to perfect the lien?
- Has a judgment or final order been entered (i.e., is the support arrearage subject to modification during the process of establishing the final order)?
- Does Michigan have appropriate jurisdiction to enforce the support order?
- Will the support arrearage likely remain unpaid for an unreasonable period of time if the lien is not imposed?

## **B. Providing General Notice of Liens to the Payer**

Before taking action to make a lien effective to encumber property, the statute provides:

“[I]n a case in which a support order was issued before [August 10, 1998], the office of the friend of the court shall send a notice to the payer subject to the support order informing the payer of the imposition of liens by operation of law and that the payer’s real and personal property can be encumbered or seized if an arrearage accrues in an amount that exceeds the amount of periodic support payments payable for 1 year under the payer’s support order.” MCL 552.625b(2); MSA 25.164(25b)(2).

MCL 552.603(6)(b) requires orders to include notice of imposition of liens by operation of law and that the payer’s real and personal property can be encumbered or seized if an arrearage accrues in an amount greater than the amount of periodic support payments payable for one year under the payer’s support order. Read together, the statutes require that the payer have reasonable notice of the possibility of lien before being subjected to a perfected lien.

Before taking action to encumber property pursuant to the lien, the friend of the court must verify that a support order was entered after August 10, 1998, or that the payer was sent notice of the imposition of liens by operation of law and that the payer’s real and personal property can be encumbered or seized if an arrearage accrues in an amount that exceeds the amount of periodic support payments payable for one year under the payer’s support order. Form FOC 3 (Appendix B) was modified in June 1999 to provide the necessary notice. This notice may be provided by other forms, such as on the text line of the “Notice of Registration of Out of State Support Order,” Form FOC 30. (Appendix B.) Regardless of how provided, the friend of the court should track when and by what manner the notice was provided.

## **C. Providing Entities With General Notice Regarding Liens**

The statute provides that the office of the friend of the court shall provide a copy of the subsection (2) notice to the following:

- a. A financial institution doing business in this state if the payer has one or more accounts at that financial institution.
- b. The appropriate agency of another state if the payer holds assets in that other state. MCL 552.625b(4); MSA 25.164(25b)(4).

The friend of the court shall provide a copy of the subsection (2) notice to each financial institution with whom a payer on that friend of the court’s caseload has an account. The notice may be provided before or at the same time a lien is perfected at that financial institution.

## **D. Perfecting a Lien**

### **1. Against an Account at a Financial Institution**

For each payer for whom a lien is to be made effective against an account at a financial institution, the friend of the court also shall send the financial institution notice of the amount of periodic support arrearage for that payer. The notice must be sent by paper means unless agreement is reached with the financial institution to send the notice by electronic data interface (EDI) or other automated means. MCL 552.625b(5); MSA 25.164(25b)(5). Federal form OMB Control # 0970-0153 (incorporated into form FOC 90; Appendix B) must be used to provide this notice to financial institutions.<sup>7</sup>

### **2. Against All Other Real or Personal Property**

The statute provides:

“To perfect a lien created by section 25a, the office of the friend of the court must record the lien with the register of deeds in the county where the real property is located, or for personal property, in the appropriate state or county office. A lien recorded as provided in this subsection takes effect on the date and at the time of that recording.” MCL 552.625b(6); MSA 25.164(25b)(6).

In order to file a lien against real property or titled personal property, the office may need to obtain documentation regarding the property. If the payee requests a lien, the friend of the court office may require the payee to supply any necessary documentation.

When known, the documentation for real property should include (a) a legal description of the property and (b) the type of ownership interest held by the payer. However, in some cases a lien may be imposed without that information. The federal form (incorporated into form FOC 90) includes a general lien against all property located within an area covered by the recording agency or that may be perfected by recording within the agency receiving the lien. Liens may be imposed on real property solely owned by the payer or owned by the payer with others.

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<sup>7</sup> Title IV-D requires each state to have laws which accord full faith and credit to child support liens arising in other states. 42 USC 666(a)(4). As required by the law, OCSE developed a form (incorporated into FOC 90) which must be used to impose interstate liens. See AT-9719. To provide consistency for financial institutions, the same form must be used to serve in-state financial institutions.

The documentation for titled personal property should include (a) a description of the property; (b) the payer's property interest; (c) identifier or serial numbers for the property; (d) any lienholder information available; and (e) the Secretary of State's identification number.

Liens against real property held in Michigan must be filed in the county where the property is located. See MCL 565.25; MSA 26.543. Liens against motor vehicles, watercraft, and other personal property normally must be filed with the Secretary of State. MCL 440.9401; MSA 19.9401.

The statute states that liens arise by operation of law against all personal property. This suggests that in addition to titled personal property, liens also arise against other tangible and intangible personal property. Assets like clothing and household furnishings are examples of untitled tangible personal property. Assets like worker's compensation claims or settlements, interest in lawsuits, interest in estates, land contracts, legal claims, annuities, stocks, shares, patents, and copyrights are all examples of intangible personal property. However, the statute does not provide a method for perfecting liens against these types of properties. Consequently, a lien must be perfected in the manner existing before the statute – i.e., the friend of the court must obtain a court order for a lien against the property. Since intangible property is normally held by a third party, and a third party is likely to comply with the court's orders, it often may be desirable to obtain an order for a lien against intangible property, or use other forms of execution available at law.<sup>8</sup> If requested to pursue a lien against these types of property, the friend of the court may ask the payee to provide it with documentation or specific information regarding the interest or asset.

For any property, the friend of the court may also require information showing that the value of the property is sufficient to make the placement of a lien cost effective. If the office exercises its discretion to file a lien, it must use the federal form developed for this purpose, OMB Control # 0970-0153 (incorporated into form FOC 90), when filing in other states. To provide consistency, the same form should be used when filing liens in Michigan.

#### **E. Notifying Payer of Perfected Lien**

The statute provides:

“The office of the friend of the court shall notify the payer when the office of the friend of the court has perfected a lien against real or personal property of the payer. The notice shall be sent by ordinary mail to the payer's last known address. A copy of the notice shall be sent by ordinary mail to the recipient of support. The notice shall include all of the following:

- a. The amount of the arrearage.

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<sup>8</sup> Since untitled tangible personal property is normally held by the person violating the support order, a lien against that type of property is not likely to be effective.



- b. That a lien is in effect on the real or personal property of the payer.
- c. That the property is subject to seizure unless the payer responds by paying the arrearage or requesting a review within 21 days after the date of mailing the notice.
- d. That, at the review, the payer may object to the lien and proposed action based on a mistake of fact concerning the overdue support amount or the payer's identity.
- e. That, if the payer believes that the amount of support ordered should be modified because of a change in circumstances, the payer may file a petition with the court for modification of the support order." MCL 552.625a(7); MSA 25.164(25a)(7).

After taking action to have a payer's assets encumbered by perfecting the automatic lien, the friend of the court office must send the statutorily-required notice to the payer that the lien has been perfected. That notice must be sent no later than five business days after the financial institution, appropriate state or county office, or holder of the property has been notified of the lien in the manner required by this policy. For notices regarding liens on accounts with financial institutions, it is recommended that the notice to the payer be sent two business days after the financial institution was notified of the lien. Form FOC 91 (Appendix B) may be used to provide this notice.

#### **F. Requests for Information or Reviews**

The statute provides:

"Within 21 days after the date on which the notice described in subsection (7) is mailed to a payer, the payer may request a review on the lien and the proposed action. If the payer requests a review under this subsection, the office of the friend of the court shall schedule the review within 14 days after the date of the request." MCL 552.525b(8); MSA 25.164(25b)(8).

The statute does not address review procedures for the period after the time for requesting review pursuant to the initial notice expires. In order to insure that accurate information is used to establish the amount levied, a review should be provided after the initial 21-day period for requesting a review if the payer provides information showing that the friend of the court's accounting may be inaccurate. The friend of the court should provide a review any other time that it believes principles of fairness require it.

In anticipation of requests for information or reviews, each office should:

1. Designate an individual or individuals who will be prepared to respond to inquiries about the status of accounts and the review process.
2. Determine how it will handle requests for account printouts and audits which may arise from these inquiries or reviews. The process must establish adequate access to

records to enable the payer to assess whether the friend of the court account is accurate.

3. Create a procedure establishing who will conduct reviews, and for setting up the review dates and times. The review must be granted if the payer requests a review within the time specified within the notice. If a review is granted, it must be held within 14 days of the request.

## **G. Conducting Reviews**

### **1. Basis for Objection to Lien**

A person notified of a perfected lien may object on the basis of a mistake of fact 1) concerning the amount of the arrearage or 2) the identity of the payer. MCL 552.625b(7)(d); MSA 25.164(25b)(7)(d).

### **2. Notice of Review**

Notice of the review must provide information regarding the date and time of the review, who will conduct the review, and information required of the payer at the time of the review. Service must be made in accordance with the requirements of MCR 2.119(C). This rule allows service to be made by regular first class mail if it is mailed at least nine days in advance of the review date. A copy of the notice must be provided to the payee/custodial parent.

### **3. Who Conducts Reviews**

The statute only states that the review be held by the "office." Since the review can be administrative in nature (similar to administrative reviews of tax offsets), each office needs to determine:

- ! Who will be designated to conduct reviews.
- ! Whether any further administrative review will be available if a party timely objects to the initial review.

### **4. Conducting the Review**

The payer may bring an attorney to the review. At or before the review, the friend of the court should supply the payer with account information sufficient to establish the amount of support due and payments made during the disputed period. Although the review can be conducted in an informal manner, the payer must be provided a written determination at the conclusion of the review which states the outcome of the review. Form FOC 70 (Appendix B) has been developed for this purpose. A copy of the determination must be provided to the payee/custodial parent.

Adjournments are appropriate when the payer needs time to provide additional information or the friend of the court needs time to audit the account. They are also appropriate where the payer or friend of the court can show other good cause why the review should not be held at the time scheduled. If the review is adjourned, the review should be conducted within an additional 14 days, unless extraordinary circumstances prevent conduct of the review within that time.

## **5. Actions After Reviews**

The statute provides:

“If, at the review, the payer establishes that the lien is not proper because of a mistake of fact, the office of the friend of the court shall terminate the lien and, within 7 days, notify the applicable entity that the lien is terminated.” MCL 552.625b(9); MSA 25.164(25b)(9).

The statute requires the friend of the court office to assess whether the lien is improper because of a mistake of fact, not whether the perfection was proper. Since the friend of the court office could immediately perfect a lien if the threshold is met at the time of the hearing, even if it was not met at the time of perfection, the lien should not be terminated under that circumstance. Nor does the friend of the court office have to terminate the lien if review determines that the threshold was met at the time of perfection, but is no longer met.

## **6. Securing a Judicial Hearing after a Review**

A payer may wish to contest the friend of the court office's determination that a lien should not be terminated. The statute does not require the friend of the court to assist a payer in securing a judicial determination regarding perfection of a lien. Offices should implement the same policies and procedures for securing a judicial hearing currently used after other administrative reviews, such as tax offset. For liens on financial institution accounts, the process for levying on the account (garnishment) will provide a way for the payer to obtain a judicial hearing if he or she objects to the garnishment.

If a referee hearing is held in accordance with MCR 3.215, the parties must be given notice of their right to file an objection and obtain a de novo hearing before a judge. Procedures used for obtaining judicial review should be the same as for any other referee hearing, taking care to normally have the matter heard by a judge within 21 days of when the written objection is filed. See MCR 3.215(F)(1).

## **H. Interstate Cases**

### **1. Incoming liens**

The statute provides:

“Liens that arise in other states shall be accorded full faith and credit when the requirements of section 25b are met.” MCL 552.625a(2); MSA 25.164(25a)(2).

Section 25b requires two things before a lien is effective: (1) that, to perfect the lien, the arrearage exceed the amount of periodic support payments payable for one year and (2) that, for cases where a support order was issued before 8-10-98, the payer be sent notice of the imposition of liens by operation of law and that the payer’s real and personal property can be encumbered or seized if the threshold arrearage is reached.

The intent of the legislation is that most liens will be sent directly to the agency responsible for regulating the property to be encumbered. However, when that agency is not readily identified by the other state’s IV-D agency, some liens will likely be sent to the Michigan Central Registry and forwarded to the friend of the court for assistance. In that case, the friend of the court must obtain certification from the other state that the two criteria have been met. There is no required form for providing this information. Sufficient information might be included on the FSA 200 sent by the other state. In the alternative, a sample form (FOC 96; Appendix B) to provide that certification is included. If the certification is provided, the friend of the court should make reasonable efforts to file the lien on behalf of the other state. However, if extensive work is necessary in order to file the lien, the friend of the court may return the lien to the other state with a request that the support order be registered for enforcement pursuant to the Uniform Interstate Family Support Act (UIFSA). As a general rule, the friend of the court office should assist another state in filing a lien to the extent the friend of the court office would expect the other state to assist in filing a lien originating from Michigan. When returning a lien to another state because the friend of the court is unable to file it, the friend of the court should inform the other state of missing information or procedural problems that prevent the friend of the court from filing the lien.

## 2. Outgoing liens

The statute provides:

“The office of the friend of the court shall provide a copy of the notice under subsection (2) to each of the following:

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(b) The appropriate agency of another state if the payer holds assets in that other state.”  
MCL 552.625b(4); MSA 25.164(25b)(4).

Federal law requires every state to provide full faith and credit to liens originating from another state.<sup>9</sup> When filing a lien in another state, federal form OMB Control # 0970-0153 (incorporated into form FOC 90), or its successor, must be used. The form must be filed with the agency regulating the property, if known.<sup>10</sup> If the appropriate agency is unknown, the lien should be conveyed to the IV-D agency in the other state with a request for assistance in filing. Federal law does not prevent the assisting state from requiring the FOC to pay filing fees. If the agency regulating the property fails to honor the lien, the friend of the court should register the case for enforcement pursuant to UIFSA.

## III. TERMINATING PERFECTED LIENS

### A. Lien Terminated by FOC

The statute provides:

“The lien . . . shall continue until the amount of past due support is paid in full or the lien is terminated by the support enforcement agency.” MCL 552.625a(1); MSA 25.164(25a)(1).

The FOC must notify the appropriate agency to terminate a lien if the amount of support is paid in full or a mistake has occurred as to the identity of the property owner. In addition, the FOC must notify the appropriate agency to terminate the lien pursuant to court order or if conditions specified

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<sup>9</sup> 42 USC 666(a)(4).

<sup>10</sup> The federal Office of Child Support Enforcement is preparing a matrix of filing requirements in the 54 IV-D entities. When completed, the matrix will include a contact person for each state.

in a local administrative order occur.<sup>11</sup> For example, a local administrative order might provide that a lien be terminated if the payer shows evidence of a substantial hardship if the lien remains and an IWO is collecting support. Notice should be provided as soon as possible after the FOC determines that the lien should be terminated, but in all cases within seven days. MCL 552.625b(9); MSA 25.164(25b)(9).

Notice should be provided to the appropriate agency by paper, unless the agency has agreed to receive the notice by EDI or other automated means. Form FOC 92 (Appendix B) may be used to provide this notice. A copy of the Notice of Lien, form FOC 90 (Appendix B), should be provided to the agency along with form FOC 92.

Even if a lien has been cancelled, a lien will reoccur by operation of law if additional support becomes past due. The FOC should perfect this new lien only if the statutory requirements for perfecting a lien are met through subsequent arrearage,<sup>12</sup> and perfection would not be contrary to a court order or local administrative order.

## **B. Order Suspending Enforcement**

MCR 3.209 (A) allows a party to file a motion for suspension of enforcement. In accordance, a lien should not be perfected after the court orders suspension of enforcement. If a lien has been perfected at the time an order suspending enforcement is entered, the FOC should terminate the lien unless the court's order states otherwise.

## **C. Bankruptcy**

The Bankruptcy code provides for stays of action against a person who has filed for bankruptcy. If the friend of the court is informed that the payer has filed for bankruptcy, it should not perfect a lien against that person's property until it determines that enforcement action is not stayed<sup>13</sup> or that any existing stay has been removed.

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<sup>11</sup> If such an administrative order is entered, the order must provide process that gives the payee an opportunity to object to cancellation of the lien prior to that cancellation. This will prevent a payee who has relied on the lien from being caught unawares by a cancellation.

<sup>12</sup> Since the FOC may terminate the lien in cases where support is not paid in full, there may be cases where unpaid support remains which is not subject to a lien. However, any additional failure to pay current support would create a new lien by operation of law. If appropriate to perfect that lien, it also appears appropriate to perfect the lien for the additional amount that previously was terminated.

<sup>13</sup> At a minimum, the FOC should request proof of the bankruptcy.

A lien which has been perfected prior to a bankruptcy proceeding may provide rights superior to those of other bankruptcy creditors. Rights pursuant to the lien will be determined by the bankruptcy court.

#### **D. Closed Cases**

Court case administrative closure criteria were distributed to friend of the court offices on July 1, 1992. Those criteria allow a friend of the court office to close a case for a variety of reasons, including where remaining arrearage is less than \$500 and where the case meets the criteria set forth in the statute of limitations. If a case is to be closed, the friend of the court office should terminate any liens existing because of the friend of the court's actions by sending notice to the appropriate agencies.

### **IV. LEVYING ON A LIEN**

The statute provides:

“If the payer fails to request a review, to appear for a review, or to establish a mistake of fact, the office of the friend of the court may collect the arrearage by levy upon any property belonging to the payer as provided in this section. The office shall notify the payer at the review or by written notice of its intent to levy.” MCL 552.625b(10); MSA 25.164(25b)(10).

#### **A. Determining When It Is Appropriate to Levy**

##### **1. Financial Institution Liens**

When a lien against an account is perfected by notice to a financial institution, the FOC normally should levy on the account as soon as practicable after the earliest date allowed by the statute. If the office determines that levy is not appropriate and that the lien should be terminated, the FOC must notify the financial institution as soon as practicable. Regardless as to its determination, if the FOC does not send a garnishment within 120 days of perfecting the lien, it must notify the financial institution that the lien is terminated.

##### **2. Liens Against Other Property**

Liens perfected against property other than financial institution accounts may be continued so long as the lien appears to be effective in collecting support. However, if no support is collected for a period of no more than one year, the FOC normally should initiate action to levy on the lien.

#### **B. Required Notice**

Before levying on a lien, the statute requires the following:

The office of the friend of the court shall notify the payer at the review or by written notice of its intent to levy. MCL 552.625b(10).

Form FOC 70 should be used to provide the notice when a review has been held. If a review is not held, Form FOC 93 (Appendix B) should be used.

### **C. Process for Levying on a Lien**

#### **1. Financial Institutions**

The statute provides:

“To enforce a lien under this section by levying against an account at a financial institution, the office of the friend of the court shall provide notice in the manner provided by law for levying against an account at a financial institution.” MCL 552.525b(11); MSA 25.164(25b(11)).

The process for levying against accounts at financial institutions is non-periodic garnishment, as provided in MCR 3.101. The verified statement, writ, and disclosure filed in a garnishment proceeding must be substantially in the form approved by the state court administrator. MCR 3.101(C). Form MC 13 and form MC 14 have been developed for this purpose. (Appendix B.)

A garnishment proceeding begins by requesting the court clerk to issue a writ of garnishment. The necessary statements to request the writ are contained within the SCAO-approved form MC 13. MCR 3.101(D). Two copies of the writ of garnishment must be served on the financial institution, along with a copy of the disclosure form MC 14, within 91 days after the date the writ was issued. Service must be in the manner provided in MCR 2.105 for service of a summons and complaint, i.e., delivering to the financial institution personally or by sending by registered or certified mail, return receipt requested, with delivery restricted to the addressee. MCR 3.101(F)(1). The applicable fee of \$1.00<sup>14</sup> must be served with the writ. MCR 3.101(F)(1).

The financial institution must deliver a copy of the writ of garnishment to the support payer within seven days of when the writ was served. MCR 3.101(F)(2). Within 14 days of being served, the financial institution must mail or deliver to the court, plaintiff, and defendant, a verified disclosure (form MC 14). MCR 3.101(H).

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<sup>14</sup> MCL 600.4011(8).



If indebted to the payer, the financial institution must withhold an amount which does not exceed the unpaid judgment stated in the writ as due. MCR 3.101(I)(1). Twenty-eight days after withholding the funds, and unless notified that an objection has been filed, the financial institution must pay the withheld funds to the friend of the court. MCR 3.101(J)(1).

The support payer must object within 14 days of when he or she is served with the writ of garnishment to prevent the financial institution from paying in accordance with the garnishment (unless otherwise ordered by the court). MCR 3.101(K)(1). If objections are filed, the payer must send notice of hearing within seven days of filing the objections. The hearing must be held within 21 days of the objections. MCR 3.101(K)(3). Objections must be based on rule-defined reasons. See MCR 3.101(K)(2).

## **2. Other Real or Personal Property**

The statute provides:

“To enforce a lien on real property or personal property other than an account at a financial institution, the office may order the sale of real property in the manner provided by law for the foreclosure of mortgage lien; order execution of the judgment; appoint a receiver of the real and personal property subject to the lien and order the property and its income to be applied to the amount of the judgment; or take any other appropriate action to enforce the judgment.” MCL 552.625b(12); MSA 25.164(25b)(12).

When levying against property other than at a financial institution, the friend of the court office may choose any appropriate remedy listed in the statute. The friend of the court office must follow all legal requirements for the remedy chosen.

## **IV. ASSESSING LIEN EFFECTIVENESS**

In an effort to assess the effectiveness of the administrative lien program, local offices are required to report specific program information. A reporting form will be developed and distributed at a later date. The following information must be reported:

1. Number of notices of liens sent to financial institutions.
2. Number of liens recorded for other real or personal property.
3. Number of cases where a lien was terminated because the payer paid the full amount of arrearage.

4. Number of payers requesting review upon notice.
5. Number of cases where a lien was terminated for mistake of fact.
6. Amount of support collected pursuant to agreement or order to release a lien.
7. Amount of support collected pursuant to levy on a lien.

**APPENDIX A**

**USE OF FIDM**  
**(Financial Institution Data Match)**  
**ACCOUNT CODES**

## Use of FIDM Account Codes

When a match is made through the data match, the financial institution will pass several codes giving information about the accounts. These codes will assist in determining in which cases to proceed against the accounts.

### *Trust Fund Indicator*

One of these codes is the trust fund indicator. The Support and Parenting Time Enforcement Act excludes trusts, annuities, qualified IRAs, accounts covered by ERISA, pension or retirement plans, and insurance policies from the definition of accounts. The act provides process for levying against accounts at financial institutions, not those things left outside the definition.<sup>15</sup> MCL 552.625b(11); MSA 25.164(25b)(11).

The multi-state response record will provide seven possible responses. The only response which does not automatically require additional investigation before action may be taken is that the account is not a registered trust or escrow account (code "0"). The other codes are as follows.

Code "1" is for UTMA/UGMA accounts. The Uniform Transfers to Minors Act is the successor to the Uniform Gifts to Minors Acts. Almost all states have adopted a version of the UTMA, including Michigan. See MCL 554.521–554.552; MSA 26.1238(1)–26.1238(32). UTMA's are not true trusts, but the property is placed in the care of a custodian who must act much like a trustee. The property belongs to the child. The custodian might not be the parent of the child – the transferor of the property names the custodian. Even though not a true trust, these accounts should not be liened because they are not the property of the payer (unless the payer is the child beneficiary of the UTMA). However, the FOC may wish to determine whether the UTMA represents a fraudulent transfer of assets. See MCL 552.624a; MSA 25.164(24a).

Code "2" is for Interest On Lawyer's Trust Accounts (IOLTA) because states have required lawyers to establish them. Lawyers are not allowed to use the funds in these accounts. Therefore, IOLTA should not be liened.

Code "3" is for mortgage escrow accounts. Escrow accounts are established by payments to a third party broker to assure that parties to a transaction fulfill their responsibilities. Therefore, these accounts should not be liened.

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<sup>15</sup> The act does not explicitly restrict placing of liens to accounts. However, when the act is read in its entirety, it appears likely that the legislature intended that only those things defined as accounts may be liened.

Code "4" is for security deposits. Security deposits represent money in which two parties have an interest: the person obtaining something which is secured by the deposit and the person providing the thing covered by the deposit. These accounts should not be liened. However, they may provide evidence of assets of the payer.

Code "5" is for other trusts or escrows. The nature of trusts and escrows normally does not allow a lien to be imposed. A lien should not be imposed unless investigation reveals that a third party does not truly have an interest in the account and that the payer has access to the funds in the account. The FOC may wish to investigate whether the account reveals assets which suggest other enforcement should occur. For example, other enforcement against the payer may be appropriate where the payer has significant discretion in determining how trust assets are to be distributed, the payer is the beneficiary of the trust, or the payer transferred the funds into the trust without fair consideration at a time indicating that the payer was attempting to avoid paying the support obligation. The facts of the case will suggest whether the other enforcement should be an order to show cause, license suspension, or referral to the prosecutor for a possible criminal non-support charge.

Code "6" is for when information as to trust or escrow status is not available. Since the nature of the account is unknown, the FOC must investigate the true nature of the account before a lien is perfected.

#### *Account Type*

Another of the codes gives the account type. The retirement type codes are excluded by statute from perfection of a lien. Those are IRA/Keogh accounts (code "12") and ERISA plan accounts (code "14").

Three of the account types always qualify for lien perfection: savings accounts (code "01"), checking accounts (code "04"), and money market accounts (code "11"). However, to limit harm to third persons receiving checks from the payer, perfection of a lien on a checking account should only occur when the payer does not have other accounts which can be liened or the amount of the lien is much less than the balance of the account.

The remaining account types have unknown qualities: accounts coded as cash balances (code "16"), compound accounts (code "17"), and other (code "18"). Liens should be perfected on these accounts only after investigation of the nature of the accounts. If a portion of the assets in the account fall within an excluded type, a lien should not be perfected against the account.

#### *Payee Indicator*

Yet another of the codes indicates the payee's relationship to the account. Code "0" is for where the matched social security number is for the sole owner of the account. The FOC may proceed to perfect these accounts if they are not trusts and are an appropriate type of account.

Code "1" is for when the social security number matches the secondary owner of the account. There are two theories as to whether the FOC should automatically perfect liens on this type of account if otherwise appropriate. One theory is that imposing the lien may harm an innocent third party, requiring investigation before the lien is imposed. Another is that the FOC has a legal right to impose the lien and the lien can easily be retracted if an innocent third party is brought forward – imposing the lien may encourage the payer to take appropriate actions to see that arrearage is timely eliminated.

Code "2" is for when the social security number matches the primary account owner, but there are secondary owners on the account. The same theories as to whether to automatically perfect the lien exist as for code "1."

## **APPENDIX B**

### **STATE COURT ADMINISTRATIVE OFFICE APPROVED FORMS**